



**IN THE MATTER OF:**

**Complainant,**

**Charge No.: 2002CA0935**

**EEOC No.: 21BA20275**

**ALS No.: 12097**

**Respondent.**

On June 24, 2003, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Charles R. Lugo. That complaint alleged that Respondent, Rock Creek Center, discriminated against Complainant on the basis of his age and ancestry when it discharged him.

Respondent never filed a verified answer in this matter. Moreover, nobody claiming to represent Respondent appeared at the status hearings on August 5, 2003 and September 2, 2003. As a result, an order was entered finding Respondent in default.

A hearing on damages was held on September 23, 2003. Despite being served with notice of that hearing, Respondent did not appear. There was no request for posthearing briefing. The matter is ready for decision.

The following findings of fact were derived from the record file in this case and from the evidence presented at the damages hearing.

1. Complainant, Charles R. Lugo, worked for Respondent, Rock Creek Center, as a Health Safety Agent.

2. Throughout his employment, Complainant performed his job duties in a manner consistent with Respondent's standards.

3. Respondent discharged Complainant on October 12, 2001.

4. At the time of his discharge, Complainant was 56 years old.

5. Complainant's ancestry is Hispanic.

6. Complainant was unemployed for four months after Respondent discharged him. His lost earnings for that period were \$10,800.00.

7. Complainant's first interim job paid less than his job with Respondent. During his tenure with that employer, Complainant earned \$7,000.00 less than he would have earned with Respondent.

8. Because of his discharge, Complainant lost \$540.00 that would have been contributed to his 401(k) plan.

9. Complainant now has a job in which he earns more than he earned with Respondent.

10. Complainant does not desire reinstatement to his former position with Respondent.

11. Complainant spent approximately \$400.00 on his job searches after his discharge. \$300.00 of that total went to mail, telephone calls and faxes, while the remaining \$100.00 was spent on transportation.

#### CONCLUSIONS OF LAW

1. Because it was found in default, Respondent has admitted the allegations of the complaint in this matter.

2. Complainant waived his right to reinstatement.

3. Complainant failed to submit evidence to prove any entitlement to emotional distress damages.

## DISCUSSION

The complaint in this matter was filed on June 24, 2003. Respondent never appeared for scheduled status hearings or took any other action to defend itself in this action. Therefore, on September 2, 2003, Respondent was found to be in default.

As a result of the default order, Respondent is deemed to have admitted the allegations of the complaint. ***Bielecki and Illinois Family Planning Council***, 40 Ill. HRC Rep. 109 (1988). Accordingly, a finding of liability against Respondent is appropriate. The only remaining issues involve Complainant's damages.

A prevailing complainant is presumed to be entitled to reinstatement to the job lost due to unlawful discrimination. However, at the damages hearing, Complainant explicitly stated that he does not want to return to work with Respondent. Therefore, reinstatement is not recommended.

On the other hand, Complainant is entitled to an award of backpay. Complainant was unemployed for four months after Respondent discharged him. His lost earnings for that period were \$10,800.00. The first job he obtained paid less than his job with Respondent. Backpay liability continued to run until Complainant found a job that paid more than his job with Respondent. See ***Martin and Sangamon State University***, 48 Ill. HRC Rep. 59 (1989), *rev'd on other grounds sub nom Board of Regents for Regency Universities v. Illinois Human Rights Commission*, 196 Ill. App. 3d 187, 552 N.E.2d 1373 (4th Dist. 1990). Complainant now has a job that pays more than his job with Respondent. However, during his tenure with his first interim employer, Complainant earned \$7,000.00 less than he would have earned with Respondent. Adding that amount to the lost backpay during his period of unemployment results in a total of \$17,800.00. That is the recommended backpay award.

Because of his discharge, Complainant lost \$540.00 that would have been contributed to his 401(k) plan. He should be reimbursed for that loss.

He also should be reimbursed for his job search expenses, since those expenses would not have been necessary if he had not been discharged. He spent approximately \$400.00 on his job searches after his discharge. \$300.00 of that total went to mail, telephone calls and faxes, while the remaining \$100.00 was spent on transportation.

It is appropriate to award prejudgment interest on the awards of backpay and other losses. Because of the delay in his receipt of the money owed him, such interest is necessary to make Complainant whole.

Complainant asked for reimbursement for \$200.00 in legal fees, but those fees cannot be reimbursed on the basis of the existing record. The proper approach to a motion for attorney's fees is set forth in the case of ***Clark and Champaign National Bank***, 4 Ill. HRC Rep. 193 (1982). Under the ***Clark*** approach, an award of attorney's fees requires proof of the reasonableness of the fees incurred, including proof of the number of hours and the hourly rate charged. Such proof was not provided. Therefore, Complainant's legal fees are not reimbursable.

Similarly, Complainant requested compensation for his personal pain and suffering and damage to his reputation, but failed to prove entitlement to such compensation. There is no presumption of damages based upon a civil rights violation. ***Kauling-Schoen and Silhouette American Health Spas***, \_\_\_ Ill. HRC Rep. \_\_\_, (1986SF0177, February 8, 1993). The Human Rights Commission presumes that recovery of pecuniary losses generally is enough to compensate a prevailing complainant for any emotional distress. See ***Smith and Cook County Sheriff's Office***, 19 Ill. HRC Rep. 131 (1985). Complainant did not establish that his emotional distress was significantly more intense than what is normally experienced by someone who is denied employment because of unlawful discrimination. Therefore, an award of emotional distress damages is not appropriate on this record.

Finally, even though Complainant did not specifically request them at the damages

hearing, there are two other types of relief that are appropriate in this situation. Respondent should be ordered to clear Complainant's personnel records of any reference to this action or to the underlying charge. In addition, Respondent should be ordered to cease and desist from further unlawful discrimination on the bases of age and ancestry.

#### RECOMMENDATION

Based upon the foregoing, it is recommended that the complaint in this matter be sustained in its entirety and that an order be entered awarding Complainant the following relief:

- A. That Respondent pay to Complainant the sum of \$17,800.00 for lost backpay;
- B. That Respondent pay to Complainant the sum of \$540.00 as compensation for lost contributions to his 401(k) plan;
- C. That Respondent pay to Complainant the sum of \$400.00 as reimbursement for out of pocket job search expenses;
- D. That Respondent pay to Complainant prejudgment interest on the moneys awarded, such interest to be calculated as set forth in 56 Ill. Adm. Code, Section 5300.1145;
- E. That Respondent be ordered to cease and desist from further unlawful discrimination on the bases of age and ancestry.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL J. EVANS  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: January 12, 2004